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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 MICHAEL HOLTSINGER,

No. CIV S-03-0732-MCE-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 J.M. BRIDDLE, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a state prisoner, brings this civil rights action pursuant to 42 U.S.C. §
18 1983. Pending before the court is defendant Voros' (formally defendant Knight) motion to set
19 aside clerk's entry of default (Doc. 223) filed January 22, 2008. Plaintiff filed his response in
20 opposition on February 15, 2008 (Doc. 230). This matter is currently on calendar for hearing
21 before Magistrate Judge Kellison on March 5, 2008, at 10:00 a.m.

22 Also pending before the court is plaintiff's request for a continuance of the
23 hearing (Doc. 231). Defendant has filed an opposition to plaintiff's request for a continuance of
24 the hearing (Doc. 233). The court finds that this matter is appropriate for submission on the
25 papers currently on file without oral argument. See Local Rule 78-230(h). The court has the
26 power to reopen the matter for further briefs, oral arguments, or both if the court deems it

1 necessary. See id. Therefore, the hearing set for March 5, 2008, at 10:00 a.m. will be vacated.
2 Plaintiff's request for a continuance will therefore be denied as moot.

3 Finally, plaintiff has filed a notice of related case (Doc. 232). Plaintiff suggests
4 this case should be related with case number 2:03-cv-1099-GEB-KJM-P pursuant to Local Rule
5 83-123. Local Rule 83-123(a) allows the court to relate cases if:

- 6 (1) both actions involve the same parties and are based
on the same or a similar claim;
- 7 (2) both actions involve the same property, transaction
or event;
- 8 (3) both actions involve similar questions of fact and
the same question of law and their assignment to the same Judge or
9 Magistrate Judge is likely to effect a substantial savings of judicial
effort, either because the same result should follow in both actions
10 or otherwise; or
- 11 (4) for any other reasons, it would entail substantial
duplication of labor if the actions were heard by different Judges or
Magistrate Judges.

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13 These cases involve some of the same parties, essentially defendant Voros.
14 However, that is where the similarities end. The cases are brought by different plaintiffs and
15 although both cases arose from the same event, namely a riot at a prison, the cases are at different
16 stages in the proceedings. In this case, the only remaining defendant is defendant Voros. All
17 other defendants have been terminated. In case 03-cv-1099, defendant Voros is just one of
18 several defendants named and continuing in that action.

19 The factual question in the cases, at least relating to defendant Voros, is whether
20 she acted with deliberate indifference to a serious medical condition so as to violate the
21 plaintiffs' Eighth Amendment rights against cruel and unusual punishment. This question of fact
22 will be significantly different in each of these cases as it will center on defendant's actions in
23 regards to each of the plaintiff's injuries, which necessarily will be different. Although the
24 parties agree that there may be a savings of judicial effort in regards to whether defendant Voros'
25 default should be set aside, the court cannot agree that these cases involve such similarities as to
26 require a related case order. This request will therefore be denied.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The hearing on defendant Voros' motion to set aside default, currently
3 scheduled for March 5, 2008, is vacated and the matter is submitted on the record and briefs;
4 2. Plaintiff's request for a continuance of the hearing is denied as moot; and
5 3. Plaintiff's request for a related case order is denied.
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7 DATED: February 22, 2008

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9 **CRAIG M. KELLISON**
10 UNITED STATES MAGISTRATE JUDGE
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